

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

EVA M. JONES

Claimant

VS.

VIA CHRISTI HEALTH, INC.

Respondent

AND

ROYAL & SUN ALLIANCE INS. CO.

Insurance Carrier

Docket No. 1,008,376

ORDER

STATEMENT OF THE CASE

Respondent and its insurance carrier (respondent) requested review of the January 7, 2013, Post Award Medical entered by Administrative Law Judge Nelsonna Potts Barnes. Joseph J. Seiwert, of Wichita, Kansas, appeared for claimant. John A. Pazell, of Overland Park, Kansas, appeared for respondent.

The Administrative Law Judge (ALJ) found claimant's need for a stress echo cardiogram satisfied the intent of K.S.A. 44-510h(a) (Furse 2000) and ordered respondent to pay the bill from Heartland Cardiology in the amount of \$5,460. Further, the ALJ agreed claimant should not have to wait from one to three weeks to get medication prescriptions filled and ordered respondent to approve the authorized physician's prescriptions within a three-day time frame.

The Board has considered the record and adopted the stipulations listed in the Post Award Medical.

ISSUES

Respondent argues it should not be ordered to pay for the stress echo cardiogram undergone by claimant because it was not reasonably necessary to cure and relieve claimant from the effects of the work-related accident. Respondent next argues that the

ALJ's order limiting it to three days to approve authorization of medication is arbitrary. Respondent contends there was no harm or injury incurred by claimant, as claimant admitted she was never denied medication.

Claimant contends the stress echo cardiogram was performed as a pre-operative treatment in order to clear her for surgery related to the work accident of October 9, 2000, and, therefore, should be paid under K.S.A. 44-510h (Furse 2000). Claimant further argues she was denied medication for significant periods of time before approval by respondent and that the ALJ had the authority to order the treatment. Claimant asks the Board to affirm the ALJ's Post Award Medical in its entirety.

The issues for the Board's review are:

1. Was claimant's preoperative cardiac testing necessary as to be covered under K.S.A. 44-510h (Furse 2000)?
2. Did the ALJ exceed her authority in ordering respondent to approve or deny claimant's prescription bills within three days of presentation?

FINDINGS OF FACT

Claimant injured her neck while working for respondent as a registered nurse on October 9, 2000. She has undergone numerous surgeries and other treatment on her cervical spine. She continues to suffer pain, including suffering migraine headaches. On August 22, 2003, the parties to the workers compensation claim entered into an Agreed Award. The parties stipulated that claimant had a permanent partial impairment of 18.5 percent to the body as a whole. The parties also agreed that claimant was entitled to future medical by agreement of the parties or upon proper application to the Director of Workers Compensation.

On May 12, 2010, the parties to claimant's workers compensation claim entered into a second Agreed Award. At that time, the parties agreed claimant was entitled to permanent total disability benefits. Respondent agreed to pay claimant a lump sum on a continued running award, "leaving all issues open for review and modification."¹

In January 2012, claimant was to undergo surgery to have a dorsal column stimulator removed and a new one inserted. The surgery had apparently been authorized, as respondent has made no argument that the removal and insertion of a dorsal column stimulator was not related to claimant's 2000 injury. As part of the pre-operative testing, Dr. John Dickerson, the surgeon, required her to have an EKG. The EKG was performed on January 19, 2012, and was abnormal.

¹ Agreed Award (May 12, 2010) at 2.

Lahna Elliot, physician assistant for Dr. Tristyn Pierce, who conducted the pre-operative examination and ordered the EKG, stated in the medical note that claimant was not cleared for surgery pending cardiac clearance with a stress echo. Ms. Elliott wrote Dr. Dickerson on January 20, 2012, stating that claimant had:

. . . a borderline abnormal EKG—there was some flat and inverted T waves in two leads and low voltage. Dr. Pierce and I have recommended that she have a stress echocardiogram done prior to surgery to be sure she does not have any signs of ischemia. She has been scheduled for this for Monday 1-23-12 . . . As mentioned above the patient needs cardiac clearance prior to being cleared for surgery . . .²

The stress test was obtained, and claimant was cleared for surgery.

Claimant testified she would not have been required to have a stress test other than for clearance to undergo the surgery. Dr. Pierce had not told claimant she had any concerns relating to claimant's heart or coronary system, and claimant has not had previous problems with the cardiac system. Claimant admitted no doctor related any coronary problems to the work injury, but she believes the doctors were trying to decrease the anesthesia risk during surgery.

On November 5, 2012, Dr. Pierce authored a letter "To Whom It May Concern" stating: "Ms. Jones further heart testing beyond what was needed at a pre-operative exam is not related to any work comp issue that she currently has."³

Claimant testified Dr. Pierce had been her authorized treating physician for five or six years. About three weeks before the post award medical hearing, her care was transferred to Dr. Mila Means. Claimant testified she has had problems getting her medications approved by respondent. She admitted none of the prescriptions for medication have been denied by respondent, but at times she has had to wait two to three weeks for the medication to be approved. During that period of time, she would be without medication for migraines and other symptoms. Claimant said at times she would go to the pharmacy with five prescriptions from the authorized physician and would leave with only three medications. She would have to wait for approval for the other medications.

PRINCIPLES OF LAW

K.S.A. 44-510h(a) (Furse 2000) states:

It shall be the duty of the employer to provide the services of a health care provider, and such medical, surgical and hospital treatment, including nursing,

² P.A.H. Trans. (Nov. 26, 2012), Cl. Ex. 1 at 1.

³ *Id.*, Resp. Ex. 1 at 1.

medicines, medical and surgical supplies, ambulance, crutches, apparatus and transportation to and from the home of the injured employee to a place outside the community in which such employee resides, and within such community if the director, in the director's discretion, so orders, including transportation expenses computed in accordance with subsection (a) of K.S.A. 44-515 and amendments thereto, as may be reasonably necessary to cure and relieve the employee from the effects of the injury.

ANALYSIS

1. Pre-operative Care

The question that must be discussed is whether the stress EKG is reasonably necessary to cure and relieve claimant from the effects of the injury. The evidence placed into the record, without objection, shows that claimant had surgery to implant a nerve stimulator in her back for pain relief in 2008. No one disputes that the need for the nerve stimulator was the result of claimant's original injury.

At some point, five wires connecting the stimulator came loose, causing claimant to have increased pain. At the request of Dr. Dickerson, pre-operative testing and a physical examination was performed by Lahna Elliot, a physician assistant for Dr. Pierce, on January 19, 2012. Dr. Pierce recommended a stress echocardiogram due to a borderline abnormality found on the EKG. Claimant was cleared for surgery.

The Board has held in a prior case that pre-operative cardiac evaluations are compensable as a part of necessary medical treatment where there was no evidence within the record to suggest that claimant had been advised that he required the cardiac evaluation independent of the work-related injury.⁴ In the present case, even though there is some evidence of a preexisting heart condition, there is no indication that claimant required the cardiac evaluation for any other reason than as a prerequisite for surgery. And it is uncontroverted that claimant required the surgery due to the work-related injury. Therefore, the Board concludes respondent should be required to pay for the cardiac evaluation.

2. Time Mandate for Prescription Approval

K.S.A. 44-510h(a)(Furse 2000) does not specify a time mandate for the provision of medical treatment. The statute simply requires the provision of reasonable and necessary medical treatment. The question then is what is reasonable regarding the time for authorizing (the provision of) medicines to a claimant pursuant to K.S.A. 44-510h(a).

⁴ *Fisher v. Cessna Aircraft Co.*, Docket No. 1,022,386, 2007 WL 2586168 (Kan. WCAB Aug. 29, 2007).

K.S.A. 2011 Supp. 44-534a provides guidance with respect to what should be considered a reasonable time for the authorization of medical treatment. K.S.A. 2011 Supp. 44-534a creates an expectation that the employer is to respond to a demand for medical treatment within seven days of receiving the demand. The Board finds that seven days is a reasonable time period in which the respondent should be able to process and act on claimant's request for the authorization of prescription medications.

CONCLUSION

Based on the foregoing the Board finds:

1. That respondent is required to pay for the cardiac evaluation; and
2. that seven days is a reasonable amount of time to process and approve or disapprove a request for authorization for prescription medications

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Post Award Medical of Administrative Law Judge Nelsonna Potts Barnes dated January 7, 2013, is modified to reflect that respondent shall process and respond to requests for the authorization of prescription medications within seven days. The Award is affirmed in all other respects.

IT IS SO ORDERED.

Dated this _____ day of March, 2013.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Joseph J. Seiwert, Attorney for Claimant
jjseiwert@sbcglobal.net
nzager@sbcglobal.net

John A. Pazell, Attorney for Respondent and its Insurance Carrier
ecruzan@mulmc.com

Nelsonna Potts Barnes, Administrative Law Judge